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No. 54

In the Supreme Court
OF THE
United States

October Term, 1929.

INTERSTATE COMMERCE COMMISSION,
Petitioner,

vs.

UNITED STATES OF AMERICA, at the relation of CITY OF LOS ANGELES, a municipal corporation,
Respondent.

On Writ of Certiorari to the Court of Appeals of the District of Columbia.

BRIEF OF CITY OF LOS ANGELES IN REPLY TO BRIEF OF AMICI CURIAE.

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Dated: October 28, 1929.

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BRIEF OF CITY OF LOS ANGELES IN REPLY TO BRIEF OF AMICI CURIAE.

INTRODUCTION.

This brief is a reply, filed by leave of this Court, to brief filed herein by leave of Court, by amici curiae on behalf of the Southern Pacific Company and other carriers.

NOTE: Throughout this brief, italics, unless otherwise stated, are ours. The printed "Transcript of Record" will be thus referred to (R).

The brief of amici curiae consists primarily of arguments on two main points, with their ramifications, as follows:

1. An argument that, by reason of the Fifth Amendment to the Federal Constitution, Congress could not constitutionally order the construction and operation of a union passenger depot as prayed for by the City of Los Angeles; and

2. An argument that, as a matter of statutory construction, Congress has not delegated to the Interstate Commerce Commission the power to make such order.

We shall address ourselves to these two points.

I.

CONGRESS HAS POWER AND AUTHORITY TO ORDER, OR TO EMPOWER, INTERSTATE COMMERCE COMMISSION TO ORDER, CONSTRUCTION AND OPERATION OF UNION PASSENGER STATION AS PRAYED FOR BY CITY OF LOS ANGELES. SUCH ORDER WOULD IN NO WAY VIOLATE FIFTH AMENDMENT.

1. ARGUMENT OF CARRIERS UNDER FIFTH AMENDMENT IS UNSOUND BECAUSE BASED ON FUNDAMENTAL FALLACY, CONTRARY TO FACTS, THAT ORDER PRAYED FOR BY CITY OF LOS ANGELES WOULD REQUIRE THEM TO UNDERTAKE A NEW SERVICE WHICH THEY HAVE NEVER UNDERTAKEN TO RENDER.

The argument of the carriers that Congress could not order, or empower the Interstate Commerce Com-

mission to order, the construction and operation of a union passenger station as prayed for by the City of Los Angeles is based entirely on the proposition that such order would require them to undertake a new service which they have never undertaker to render.

It is well established by numerous decisions of state courts in union passenger station cases decided prior to the Transportation Act, 1920, that under the *police power* public authority has power to require the construction and operation of union passenger stations where legislative authority exists and where such order would, on the facts, be reasonable.

Railroad Commission of Alabama v. Northern Alabama Railway Co., 182 Ala. 357, 62 So. 749;

Railroad Commission of Alabama v. Alabama Great Southern R. Co., 185 Ala. 354, 64 So. 13;

Mayor and Aldermen of Worcester, et al. v. Norwich and Worcester Railroad Company, et al., 109 Mass. 103;

Dewey v. Atlantic Coast Line, et al., 142 N. C. 392, 55 S. E. 292;

Missouri, O. & G. Railway Co. v. State, 29 Okl. 640, 119 Pac. 117;

State v. St. Louis Southwestern Railway Co. et al. (Tex. Civ. App.), 165 S. W. 491;

Gulf, Colorado & Santa Fe Railway Company et al. v. State (Tex. Civ. App.), 167 S. W. 192;

State v. St. Louis Southwestern Railway Co. et al. (Tex. Civ. App.), 199 S. W. 829.

Four times—twice by the California Railroad Commission and twice by the Interstate Commerce Commission—the plan for the construction of the union passenger station near the Plaza in Los Angeles has been found by public administrative tribunals to be reasonable and in the public interest.

On this same subject, the Court of Appeals of the District of Columbia, in the decision now under review herein, said (R. 169):

> *"The situation here disclosed is most reasonable and well within the jurisdiction of administrative authority."*

The carriers seek to escape the effect of the numerous decisions hereinbefore cited by urging (contrary to the facts in quite a number of these decisions) that they do not apply where it would be necessary for the carriers to make any *extensions* of their tracks in order to reach the site of the proposed new union passenger station.

To give point to this contention, the carriers ask whether Congress could compel the Santa Fe to establish station facilities at San Fernando, a point within the far-flung city limits of Los Angeles some 15 to 20 miles away from the Santa Fe's existing line, or whether Congress could compel a railroad company which had established a terminal at Boyle Heights, in the eastern edge of the City of Los Angeles, to move its terminal many miles across the City to Hollywood, in the west end of the City (Brief of Amici Curiae, pp. 12-13).

These illustrations reveal the utter weakness of the carriers' position. No one is here proposing any such fanciful or unreasonable acts.

All that the City of Los Angeles is asking is that the carriers be directed to perform in a more adequate, more convenient and more safe manner the identical passenger service which for years these carriers have undertaken and held themselves out as performing in the identical portion or section of the City where their lines of railroad are now being operated and where their passenger stations have for many years been located.

a. Location of Site of Proposed Union Passenger Station.

The map of the Railroad and Industrial District of Los Angeles which appears opposite page 28 of the record and the Plan for Union Passenger Terminal at the Plaza which appears opposite page 128 of the record show the site of the proposed union passenger station in relation to the existing tracks and passenger depots of the carriers.

As appears from the map first referred to, the Southern Pacific's main line from the north, the Santa Fe's main line from the north and the Salt Lake's branch line to Pasadena all run under a single bridge or viaduct over the Los Angeles River, known as the North Broadway Viaduct, at the entrance to the city from the north. The two former lines are located under said viaduct along the west bank of the river and the latter line along the east bank. The point at

which said tracks of said carriers run under the North Broadway Viaduct is located only approximately three-fourths of a mile distant northerly from the site of the proposed union passenger terminal.

As also appears from said map and plan, the Santa Fe's main line tracks run directly across the site of the proposed union passenger terminal near the west bank of the river, the Southern Pacific's main line tracks run across the site along Alameda Street and the Salt Lake's branch line track lies along the east bank of the river, directly across the river from the site.

Said map also shows that the present passenger stations of all three railroads are located within the same section or portion of the City as the site of the proposed union passenger terminal, the Southern Pacific passenger depot being within approximately one mile of the proposed site, the Santa Fe's depot within less than a mile and the Salt Lake's former depot (now burned) within only about half a mile.

This situation was thoroughly understood by this Court when it decided the *Los Angeles Union Station Case,* 264 U. S. 331, 338-40.

What is here proposed is merely a regulation in the public interest, under the police power, of the passenger service which these carriers have for many years been performing by means of their tracks, trains and depots in this identical railroad and industrial district of the City of Los Angeles.

The Interstate Commerce Commission so understood the situation. The Commission found that the City's proposal is just and reasonable and for that reason made all the *findings* and issued all the *certificates* requested by the City and necessary for the consummation of the project. The only request not granted was for a *final order* requiring the construction of the union passenger station. The failure to grant that request was not due to doubt on the *facts* as to *reasonableness* but to a belief that under a proper interpretation of the Interstate Commerce Act that specific power has not been conferred by Congress.

b. Authorities Relied on by Carriers are not in Point.

In support of their contention as to the Fifth Amendment, the carriers rely on a number of decisions of the Supreme Court of California (Brief of Amici Curiae, pp. 13-17). However, none of these cases are in point, for the reason that in each of them the Railroad Commission of California had ordered the common carrier or public utility affected to undertake a service which the Court found it had not theretofore undertaken to render.

Thus, in *Atchison, Topeka & Santa Fe Ry. Co. v. Railroad Commission,* 173 Cal. 577, the Railroad Commission had ordered the Santa Fe to construct and operate a line of railroad twelve or more miles in length into territory not theretofore served by the railroad.

In *Pacific Telephone and Telegraph Co. v. Eshleman,* 166 Cal. 640, the Commission had directed the

Pacific Telephone and Telegraph Co. to construct a physical connection between its lines and those of two rival telephone companies and to transmit telephone messages thereover—a service to which the court found the Pacific Company had never dedicated its property.

In *Del Mar Water, Light and Power Co. v. Eshleman,* 167 Cal. 666, the Commission had made an order directing a water company to extend its water distributing system into territory which the court found the water company had never held itself out as ready or willing to serve.

Finally in *Hollywood Chamber of Commerce v. Railroad Commission,* 192 Cal. 307, an attempt was made to compel the Railroad Commission to hear and determine a complaint which asked that the Commission make an order requiring Los Angeles Railway Corporation to construct *ten and one-half miles* of double track railroad into Hollywood—*a territory which the railway corporation had never undertaken to serve.*

We submit that these cases do not support the contention of the carriers as applied to the facts of this case.

c. Franchises.

At pages 22-24 of their brief, the carriers cite the California Civil Code, Section 291, and the case of *Hollywood v. Railroad Commission,* 192 Cal. 307, in connection with their argument that it will be neces-

sary for them to secure additional franchises to enable them to carry out an order for the construction and operation of the proposed union passenger station.

However, the franchises there referred to are very different from those which the carriers will require in connection with the union station project. Section 291 of the Civil Code provides that a railroad corporation must state in its articles of incorporation, among other matters, "the *place* from and to which it is intended to run, and all the intermediate branches". The *place* here is Los Angeles. No change in this general franchise is proposed. In the *Hollywood* case, an attempt was being made to compel a street railway company to extend its system into a new territory which the railway company had never undertaken to serve. The California Supreme Court pointed out that the railway company had no franchise for that purpose.

The franchises or permits necessary in the instant case are entirely different. They merely cover the right to cross a few streets in the vicinity of the site for the proposed union passenger station so as to bring about the necessary track rearrangements.

We are not impressed by the argument of the carriers that they can block the public authorities by refusing to make application to the City of Los Angeles for franchises authorizing the use of certain new or additional public street areas in connection with the construction of a union passenger station in the Plaza Area. If the carriers can be directed to use the power of eminent domain to acquire such addi-

tional land as they may need in connection with the union passenger station project (as is undoubtedly the law) we know of no reason why they can not likewise be directed, if necessary, to make application for the necessary franchises. It would seem to be ridiculous if the carriers could block a great project convenient and necessary in the public interest by merely "sitting tight" and refusing to make a routine application for a franchise which the city authorities are entirely willing to grant.

The conclusive answer to this contention is that the City Council of Los Angeles has already placed itself on record formally as willing to grant whatever franchises may be necessary in order to enable the carriers to make effective such plan for the construction of a union passenger station in Los Angeles as may be ordered by the Interstate Commerce Commission. The situation is thus set forth in Paragraph XVII of the Petition for the Writ (R. 25):

> "That the city of Los Angeles, by formal resolution of its City Council now in full force and effect, stands ready to grant such franchises or permits and to enact such ordinances for the opening or closing of all such public street areas as may be necessary to make fully effective the said order for which it prays in said Docket No. 14,778 before the Interstate Commerce Commission."

We believe that further discussion of this point is unnecessary.

d. **Argument of Carriers on Questions of Policy and Management.**

At page 20 of their brief, carriers urge that

> "the investment of new money in additional enterprises is strictly a matter of corporate business policy to be left to the sound discretion of the directors, and may not be compelled by any governmental agency."

If this statement refers to entirely new enterprises in which the carriers have never engaged, such as the construction of a branch line of railroad 12 or 15 miles into a territory not theretofore served, it has no bearing on the facts of this case and need not be further considered.

On the other hand, if the statement is intended to apply to the facts of the instant case, it is an entirely erroneous statement of the law.

The books are full of cases upholding the right of public authorities, state and federal, to require common carriers and other public utilities to invest money in new structures to enable them to perform more adequately, conveniently and safely, their duties to the public. The most recent decision of this character by this Court is, we believe, *Lehigh Valley Railroad Company v. Board of Public Utility Commissioners of New Jersey,* 278 U. S. 24, decided on November 19, 1928. In that case, this Court upheld an order of the Board of Public Utility Commissioners of New Jersey requiring the Lehigh Valley Railroad Company to construct at a cost of $324,000 a new structure, namely, an overhead crossing, for

the purpose of eliminating two railroad grade crossings.

At pages 19 and 20 of their brief, the carriers refer to two New York decisions to the effect that under the statutory provisions in effect in New York the Public Service Commission of that state could not override the discretion of the officers of a public utility on the subject of the issue of new securities. However, the Court's attention is respectfully invited to the fact that under the provisions of Section 20a of the Interstate Commerce Act the Interstate Commerce Commission now has very broad and comprehensive authority over the issue of securities by common carriers subject to the Act, including the right to override the "discretion" of the directors and other officers and that Paragraph (3) of said Section expressly provides:

> "(3) The Commission shall have power by its order to grant or deny the application as made, or to grant it in part and deny it in part, or to grant it with such modifications and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises * * *"

Whenever the carriers desire to escape regulation in any particular, they always urge that the particular question is one of "policy and management" to be determined by their board of directors. They have made this contention in rate matters, service matters, matters relating to the issue of securities, and, in fact, at one time or another, with reference to every matter

affecting their relationship to the traveling and shipping public.

The same argument was made, without effect, to this Court in the *Los Angeles Union Station Case.*

As far as we can ascertain, no court in any union passenger station case has ever sustained this contention of the carriers, while, on the other hand, the argument had been ruled against in every union station case in which it has been presented.

We do not consider it necessary to devote any further time to this contention.

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2. UNDER THE POLICE POWER, PUBLIC AUTHORITY MAY REQUIRE THE CONSTRUCTION AND OPERATION OF UNION PASSENGER STATIONS WHENEVER THE POWER HAS BEEN CONFERRED AND, ON THE FACTS, SUCH ORDER WOULD BE REASONABLE.

This has been held in many union passenger station cases decided by state courts prior to the Transportation Act, 1920.

These decisions are in point here for the reason that in these cases the carriers pressed the identical points against the decisions of the state authorities, under the *Fourteenth* Amendment which they now urge against possible action by the Interstate Commerce Commission, a federal tribunal, under the *Fifth* Amendment.

The carriers seek, on pages 26 to 31 of their brief, to distinguish or explain away these decisions but we

are not convinced that their efforts have in any case been successful.

a. Union Depot Decisions of State Courts.

In *Railroad Commission of Alabama v. Northern Alabama Railway Co.*, 182 Ala. 357, 62 So. 749, the Railroad Commission of Alabama ordered three railroad companies to construct a union passenger station upon a site selected by the Commission. The railroad companies were ordered to acquire said site by purchase or condemnation. Complainant alleged that it had its own depot and had already arranged to construct a new and larger depot upon its own site. It averred that the Commission's order was unreasonable and arbitrary and deprived complainant of its property without due process of law in violation of the Constitutions of Alabama and the United States. The Court held that the Railroad Commission's order, made in the exercise of the state's police power, did not violate any provision of the State or Federal Constitutions, "notwithstanding the railroad may lose the use of the old building or the use of the lot as a location for its passenger depot". On this point, the Court said (p. 752):

> "It acquired the lot and erected the building with a full knowledge of and subject to the police power of the state."

The carriers seek to distinguish this case (Brief of Amici Curiae, p. 26) by saying that "evidently the proposed station was located at a point where three

railroads converged and the order therefore did not involve the question of the power to compel an *extension* of lines by any carrier." We are not impressed by this contention. The report shows clearly that the Commission directed the railroads to acquire a new site not then owned by any of the carriers and directed that, if it should become necessary, one of the three railroads, named in the order, should acquire the land either by purchase or by condemnation. We do not understand how the railroads were to reach this new site unless they extended their lines thereto. We understand the case as necessarily involving an order to *extend* the tracks of the carriers to the new site. Otherwise, the Commission's order would be an idle act.

In *Railroad Commission of Alabama v. Alabama Great Southern R. Co.*, 185 Ala. 354, 64 So. 13, the Railroad Commission of Alabama ordered 5 railroads to secure sufficient grounds within a specified territory in the city of Bessemer for a union passenger depot and to erect a union passenger depot thereon. The railroads having failed to submit plans for the site of the passenger depot or to agree on the apportionment of the expense, the Commission issued a supplemental order fixing the location of the depot and apportioning the cost thereof and directing the railroads to acquire the site by purchase or condemnation. The Railroad Commission's orders were held valid.

On page 16 of the Reporter, the court said:

> "Unless the contrary is clearly shown, we will presume not only that the place prescribed is

suitable, but that sufficient ground can be obtained, either by private purchase or by condemnation proceedings, at reasonable figures, for such station. Through the power of eminent domain which the law has conferred upon the railroad companies, they possess all the power which is necessary to acquire the needed lands at their fair value, and under the present state of the record, we must presume that the Railroad Commission has placed no unreasonable burden upon the railroad companies in so far as the acquisition of the needed ground for the station is concerned."

At page 18 of the Reporter, the court continued:

"It would, however, create a strange anomaly for the courts to hold that a state has the authority to require all railroad companies operating railroads within a city, whenever the reasonable needs of the traveling public are such as to demand a union passenger station at that point, to use a union passenger station in said city, and at the same time deny to the state the power to require such companies to jointly acquire by purchase or by condemnation proceedings, sufficient land upon which to maintain the building and to jointly construct the necessary building. The two positions are inconsistent and cannot co-exist. If the state has the power to which we have referred, and that power seems to be conceded, then it has the corresponding authority to put that power into exercise."

The carriers seek to minimize the effect of the decision (Brief of Amici Curiae, pp. 26-27) by saying that "the power of the state to compel all railroads entering a given city to use a union station was conceded." However, the report shows that the Court made the

following decisions in overruling contentions of the carriers to the contra:

(1) That public authority may require several railroad companies to acquire, either by purchase or by condemnation proceedings, new land for a union passenger station (64 So. 13, 15-16);

(2) That an order for the construction and operation of a union passenger station is not void because it directs the railroads to abandon their presently occupied and used separate depots and depot facilities (64 So. 13, 16); and

(3) That the several railroads may be jointly directed to purchase or condemn the new land for the union passenger station (64 So. 13, 18).

On the general question of the constitutional power of the legislature to authorize a state railroad commission to require the construction of a union passenger station and to select the site thereof, the court concluded (64 So. 13, 18):

> "It seems to us, therefore, that the Legislature had the constitutional power to vest in the Railroad Commission the authority which it conferred upon it in the above-quoted section 5545 of Code of 1907 * * * and that no part of said section is violative of any clause of the state or federal Constitution."

In *Mayor and Aldermen of Worcester et al. v. Norwich and Worcester Railroad Company et al.*, 109 Mass. 103, a statute of Massachusetts provided that 5 railroad companies should unite in a union passenger station in Worcester; that commissioners should select

the site as between two sites named in the statute; that one of the railroads should erect the station with power to condemn, the other railroads paying rent; that after the completion of the station two specified railroads "shall respectively discontinue the present locations of their railroads in portions of the city of Worcester"; that all the railroad companies may and shall unite in the location and construction of one or more railroad tracks for their joint use; and that the railroads might each purchase or take such lands as might be necessary for their purposes.

The objecting railroads urged, among other matters, that to extend their railroads to the union station "would require the taking of much land from private persons for the location of the extensions, through densely settled portions of a populous city"; that the construction of the tracks would involve great expenditures; that one track extension would have a length of over one mile; that some of the railroads would be required to discontinue without compensation valuable portions of their present locations; and that public convenience and necessity would not be served by the changes ordered by the statute.

The Supreme Judicial Court of Massachusetts held that the statute was a reasonable exercise of the right to alter, amend or repeal corporate charters, reserved to the Legislature, and at page 113 said:

> "It is no valid objection to such alterations that they require corporations to extend their tracks, and to exercise the right of eminent domain for this purpose, and to incur additional

> expense. The power to extend their tracks is often granted at their own request, and is granted with no less propriety when the interests of the public require it."

The carriers concede (Brief of Amici Curiae, p. 27) that this case is opposed to their contentions but seek to avoid its effect by urging that the decision (referring to the reserved power to alter, amend or repeal a corporate charter) "is in direct conflict with the decision of this Court in *Superior Water etc. Co. v. City,* 263 U. S. 125." However, we submit that the latter decision does not have the effect ascribed to it by the carriers and that it is not in point for them. The decision merely holds that a state legislature can not substitute an indeterminate permit provision for an existing *contract* between a city and a waterworks company. The police power was in no way involved. As we read the decision, it has no bearing on the present situation.

In *Dewey v. Atlantic Coast Line et al.,* 142 N. C. 392, 55 S. E. 292, a number of citizens of Goldsboro, N. C., brought an action against 3 railroad companies to prevent obedience by them to an order of the Corporation Commission of North Carolina requiring the railroad companies to construct a union passenger depot on a specified site somewhat removed from the site of the existing depots. In upholding the statute under which the Corporation Commission acted and also the Commission's order, the court, at page 294 of the Reporter, said that the power of the Legisla-

ture to enact such statutes has been established by numerous well-considered cases. The court also drew attention to the fact that the railroads might use the power of eminent domain to acquire such new properties as might be necessary to enable them to carry out the Commission's order (p. 295).

The carriers (Brief of Amici Curiae, p. 28) seek to overcome the effect of this decision by drawing attention to the fact that the action arose at the suit of third parties, namely, property owners, to enjoin the railroad companies from carrying out the Commission's order. However, the petitioning third parties raised the whole question of the authority of the legislature to enact a statute conferring such union passenger station powers on the Corporation Commission, and we submit that a decision on that issue is just as effective and significant in an action by these parties as it would have been in an action by the railroad companies or the Corporation Commission. The Court held:

(1) That the power of the Legislature to enact such statute has been established by numerous well-considered cases (55 S. E. 292, 294); and

(2) That the power of the State to act is not limited to a case in which the railroads already own the site and the right of way leading thereto. If additional property is necessary, it can be acquired by the railroads under the power of eminent domain (55 S. E. 292, 295).

In *Missouri, O. & G. Railway Co. v. State,* 29 Okl. 640, 119 Pac. 117, it appeared that the Corporation Commission of Oklahoma had made an order directing Missouri, O. & G. Railway Company and two other railroad companies to erect and maintain a union passenger depot in Durant, Oklahoma, at a designated site. Appellant urged that the Commission's order would compel it to abandon a right of way and station grounds theretofore acquired by it; that it would lose a bonus of $10,000 which citizens of Durant had subscribed for the erection of a passenger station on said station grounds; that the Commission's order would require appellant to acquire a new right of way through private property; that it would necessitate an expenditure by appellant of not less than $50,000; and that the order violated appellant's rights under the Constitution of the United States. In ruling against these contentions, the court, at page 121 of the Reporter, held that the Commission's order might be sustained either under the reserved power to amend, alter or repeal the charters of corporations "or on the ground, as stated by Judge Brewer in *State v. Kansas City etc. Ry. Co.,* 32 Fed. 722, that the same is a valid exercise of the police power of the state."

The carriers (Brief of Amici Curiae, p. 28) seek here to distinguish the case on the ground that "the ruling is rested squarely upon the authority of the Massachusetts case of *Mayor v. Norwich, etc.,* supra, which, as we have shown, is contrary to the decisions

of this Court and can not be accepted as authority here." To this contention we make two responses as follows:

(1) The carriers have not shown that the Massachusetts decision is contrary to the decisions of this Court. The only decision mentioned by the carriers in this connection, namely, *Superior Water etc. Co. v. City,* 263 U. S. 125, is not in point at all, as we have shown. Furthermore, this Court expressly cited the Massachusetts case with approval in *Wisconsin, Minnesota & Pacific Railroad v. Jacobson,* 179 U. S. 287, 302.

(2) The carriers are in error in saying that the decision in the Oklahoma case "is rested squarely upon the authority of the Massachusetts case * * *". The decision was rested not only upon the Massachusetts case but also, in express words

> "on the ground, as stated by Judge Brewer in *State v. Kansas City, etc., Ry. Co.,* 32 Fed. 722, that the same is a *valid exercise of the police power of the state.*"

Whatever other sources of authority may exist, it is, of course, settled law that in all cases the valid exercise by public authority of the power to require the construction and operation of union passenger stations springs fundamentally from the *police power.*

In *State v. St. Louis Southwestern Railway Co. et al.* (Tex. Civ. App.), 165 S. W. 491, the state of Texas asked that a writ of mandamus issue to enforce an order of the Railroad Commission of Texas directing the 3 defendant railroad companies to erect and

maintain a union depot at Hillsboro, Texas. Judgment for the defendants was reversed and the case remanded for a new trial on issues of fact. At page 498 of the Reporter, the court said:

> "We have no doubt as to the constitutionality of the law requiring railroads to build union depots at such places and of such character as the Railroad Commission shall find necessary for the accommodation of the public, when it shall also have found the other facts required by the statute, but, if any doubt existed on the subject, it would be our duty to resolve it in favor of the statute."

Replying to the argument that the statute did not authorize the Railroad Commission to select the *site* of the proposed union depot, the court said (p. 498):

> "The statute explicitly grants the Commission the power to require railroads to build union depots, and that carries with it, by necessary implication, every power necessary to the accomplishment of such object. Courts ought not to resort to technicalities to override the clear import of a statute."

Answering the argument that the order of the Railroad Commission was void because it directed the construction of a union depot on a site owned by one of the railroads which refused to let in the others, the court said (p. 498):

> "But this is immaterial, as said appellees have the right to acquire, by condemnation proceedings, such interest in said land as is necessary for their depot purposes under the order of the Commission."

The carriers (Brief of Amici Curiae, p. 29) merely refer to this decision by saying that

> "the question of the power of the state to compel a railroad to extend its lines in order to enter a union station does not appear to have been raised."

This contention of the carriers is obviously in error, as appears from the above-quoted language from the decision.

The principal contentions of the carriers in support of their claims under the Federal Constitution may be thus summarized:

1. The carriers can not lawfully be required to abandon any of their existing passenger facilities.

2. The carriers can not lawfully be required to acquire additional land by the exercise of the power of eminent domain.

3. The carriers can not lawfully be compelled to grant the use of any portion of their property to a rival railroad.

4. No public authority can lawfully compel carriers to go to a new site within the same city and there erect a union passenger depot.

Each of these points has been decided, on numerous occasions, against the contentions of the carriers.

Without wearying the Court by further quotations from union depot cases, we shall merely cite the union depot decisions on each of these four points.

(1) Abandonment of Existing Passenger Stations and Other Facilities.

The following decisions hold that an order for the construction of a union passenger depot, otherwise valid, does not lose its validity because it contemplates the abandonment by one or more railroads of their existing passenger stations and other passenger facilities. Practically every order for the construction of a union passenger depot involves the abandonment of one or more existing passenger depots adequate for that railroad alone.

Railroad Commission of Alabama v. Northern Alabama Ry. Co., 182 Ala. 357, 62 So. 749;

Railroad Commission of Alabama v. Alabama Great Southern Ry. Co., 185 Ala. 354, 362, 64 So. 13, 16;

State v. Jacksonville Terminal Co., 71 Fla. 295, 331, 71 So. 474, 484;

Mayor & Aldermen of Worcester v. Norwich and Worcester RR. Co., 109 Mass. 103;

Missouri, O. & G. Ry. Co. v. State, 29 Okl. 640, 119 Pac. 117;

Chicago, R. I. & Pac. Ry. Co. v. State, 90 Okl. 173, 217 Pac. 147;

State v. St. Louis Southwestern Ry. Co. (Tex. Civ. App.), 165 S. W. 491, 199 S. W. 829, 930.

(2) Acquisition of Additional Land by Eminent Domain Proceedings.

The following decisions hold that the fact that compliance with an order for the construction of a union

passenger depot will require a railroad to acquire additional property by the exercise of the power of *eminent domain* does not militate against the validity of the order.

Railroad Commission of Alabama v. Northern Alabama Ry. Co., 182 Ala. 357, 62 So. 749;
Railroad Commission of Alabama v. Alabama Great Southern Ry. Co., 185 Ala. 354, 361, 64 So. 13, 15, 16;
Mayor and Aldermen of Worcester v. Norwich and Worcester Railroad Co., 109 Mass. 103;
Dewey v. Atlantic Coast Line, 142 N. C. 392, 55 S. E. 292;
State v. St. Louis Southwestern Ry. Co., (Tex. Civ. App.) 165 S. W. 491, 498, 199 S. W. 829, 830.

On this point, see also

Wisconsin, Minnesota and Pacific Railroad v. Jacobson, 179 U. S. 287, 302.

(3) Use of Property of Rival Railroad.

The fact that compliance with an order for the construction of a union passenger depot will require a railroad to acquire the right to use the property of a rival railroad will not make such order invalid. The public authorities may, under their police power, make such orders.

Railroad Commission of California v. Southern Pacific Company, 264 U. S. 331;
Mayor & Aldermen of Worcester v. Norwich & Worcester RR. Co., 109 Mass. 103;

Missouri, O. & G. Ry. Co. v. State, 29 Okl. 640, 119 Pac. 117;

Chicago, R. I. & P. Ry. Co. v. State, 90 Okl. 173, 217 Pac. 147;

State v. St. Louis S. W. Ry. Co. (Tex. Civ. App.), 165 S. W. 491, 498, 199 S. W. 829, 830.

(4) Selection of New Site.

The fact that the public authority selects for the union passenger depot a *new site* on lands of third parties does not make the order invalid. Public authority has just as much power to select as a site the lands of third parties as lands already in railroad ownership.

Railroad Commission of Alabama v. Northern Alabama Railway Co., 182 Ala. 357, 62 So. 749;

Railroad Commission of Alabama v. Alabama Great Southern R. Co., 185 Ala. 354, 64 So. 13;

Dewey v. Atlantic Coast Line R. Co., 142 N. C. 392, 55 S. E. 292.

(5) Additional Authorities.

In the following additional cases, the right of the public authorities to order the construction and operation of union passenger stations, where the facts showed such order to be reasonable, was upheld.

State ex rel. Barton County v. Kansas City, Ft. S. & G. R. Co., 32 Fed. 722;

State ex rel. Railroad Commissioners v. Atlantic Coast Line R. Co., 67 Fla. 441, 63 So. 729;

Griffin v. Southern Ry. Co., 150 N. C. 312, 64 S. E. 16;

Corporation Commission v. Seaboard Air Line Ry. Co., 161 N. C. 270, 76 S. E. 555;

North Carolina Corporation Commission v. Southern Ry. Co., 185 N. C. 435, 117 S. E. 563;

Missouri, K. & T. Ry. Co. v. State, 38 Okl. 401, 133 Pac. 35;

Chicago, R. I. & P. Ry. Co. v. State, 90 Okl. 173, 217 Pac. 147.

We shall conclude this branch of our reply by quoting from the first decision of the Interstate Commerce Commission in the *Los Angeles Passenger Terminal* cases, 100 I. C. C. 421, 425 (R. 53) with reference to the effect properly to be given to the union passenger depot decisions of the state courts on which we rely, as follows:

> "All parties concede that if we have the power to require the construction of a union station, it has come in the Transportation Act, 1920. Prior to that enactment such power was clearly in the States. In numerous instances States had by constitution or statute delegated power to their railroad commissions to require the construction and operation of union stations. In such cases, where the facts reasonably come within the legislative enabling act, the State courts have upheld orders of the State commissions. The State courts have held the order could not be defeated (1) by show-

ing that compliance would require a railroad to acquire additional property by the exercise of the power of eminent domain, (2) or because it contemplated the abandonment by some railroads of their existing passenger stations and other passenger facilities, (3) or because compliance would require a railroad to acquire the right to use the property of a rival railroad."

(Note: There follows, in a footnote, the citation of the decisions of the state courts on which we rely on the question of deprivation of rights guaranteed by the Federal Constitution. 100 I. C. C. 421, 426 (R. 54).)

b. Decisions of Supreme Court of United States.

In *Wisconsin, Minnesota and Pacific Railroad v. Jacobson,* 179 U. S. 287, the Railroad and Warehouse Commission of Minnesota had made an order directing two railroad companies to make track connections. The carriers objected on the ground, among others, that in order to construct a connecting track it would be necessary for the company "to go outside of its right of way and to condemn land for that purpose" (p. 291). This Court affirmed the order. The carriers here say (Brief of Amici Curiae, pp. 31-2), that the case is not in point. We rely on the case to meet the contention of the carriers that they can not be compelled to acquire *new land* not now owned by them for the purpose of erecting a union passenger station thereon. In holding a similar contention to be unsound, this Court in the *Jacobson* case, held that the order of the Minnesota Commission was valid "although to carry out the judgment may require the exercise by

the plaintiff in error of the power of *eminent domain*" (179 U. S. 287, 302).

In the *Los Angeles Union Station Case,* 264 U. S. 331, the carriers made in full detail under the head of alleged violation of the *Fourteenth* Amendment precisely the same arguments which they now urge under the *Fifth* Amendment against the constitutionality of a possible order of the Interstate Commerce Commission. If by reason of any provision of the Federal Constitution no public authority has any power to order the construction of a union passenger station in Los Angeles under the circumstances here shown, this Court would undoubtedly have said so, whereupon the case would have been ended. However, this Court acted on the assumption that the appropriate public authority *does* have the power under these circumstances to order the construction of a union passenger station and, accordingly, addressed itself to the further questions in the case.

The carriers do not deny (Brief of Amici Curiae, (p. 32) that in the *Los Angeles Union Station Case* they urged against the validity of the order of the Railroad Commission of California all the points, under the *Fourteenth* Amendment, which they now urge against the authority of the Federal Commission under the *Fifth* Amendment.

We believe that we are justified, under the circumstances, in adding the decision of this Court in the *Los Angeles Union Station Case* to all the other union station cases holding that there is no merit in

the claims of the carriers of violation of rights under the Federal Constitution.

3. CONCLUSION AS TO FIFTH AMENDMENT.

In leaving the subject of the Fifth Amendment, we invite the Court's attention to the fact that the *carriers have been unable to point to a single union passenger decision of any court, state or federal, in support of their contentions.*

On the contrary, the numerous union passenger station cases show, in our opinion, very conclusively, that there is no merit in the argument of the carriers based on asserted violations of their rights under the Fifth Amendment or any other provision of the Federal Constitution.

Plainly, Congress has the power and authority to order, or to empower the Interstate Commerce Commission to order, the construction and operation of the union passenger station as prayed for by the City of Los Angeles.

The only remaining question is whether Congress has conferred that authority upon the Interstate Commerce Commission.

II.

CONGRESS HAS CONFERRED ON INTERSTATE COMMERCE COMMISSION POWER TO MAKE ORDER PRAYED FOR BY CITY OF LOS ANGELES.

The carriers devote pages 34-66 of their brief to an argument that Congress has not, in fact, conferred on

the Interstate Commerce Commission the power and authority to make the order prayed for by the City of Los Angeles. This is solely a question of statutory construction of the Interstate Commerce Act.

This subject has already been quite fully covered by us in our brief in reply to the brief of the Interstate Commerce Commission, on file herein.

We shall reply here only to such new or additional matter as is contained in the brief of the carriers on this subject.

1. Paragraphs 18 to 21 of Section 1 of the Act.

At page 35 of their brief, the carriers say:

> "We do not think that the Commission had any authority or jurisdiction to issue any certificates because they were not asked for by the carriers, or any one of the carriers, but this is not the place or time to discuss that proposition."

In reply, we shall merely content ourselves, before passing to the next point, by saying that it is entirely clear to us that the Interstate Commerce Commission, when it made its findings and issued its certificates in its second decision (R. 139-40, 146-7, Appendix 3 and 4 to brief in reply to the brief of the Interstate Commerce Commission) acted in exact accord with the decision of this Court in the *Los Angeles Union Station Case,* 264 U. S. 331, 338, 341, 346, 347, 348. This Court, in our opinion, definitely decided in that case that it is incumbent upon the Interstate Commerce Commission to take action under the provisions of said Paragraphs 18 to 21, inclusive, of Section 1 of

the Act, *not* in a case in which the carriers were asking *permission* to act, but in a case in which public authority was undertaking to *require* them to act.

At page 36 of their brief, the carriers suggest that there is an inconsistency between holding that a *certificate* is necessary from the Interstate Commerce Commission and also an *order*. If the Commission has power to *order* the construction of a union passenger station, say the carriers, why is a *certificate* from the Commission also necessary? The answer is, of course, that this is merely one of the numerous cases in which administrative tribunals, both state and federal, are required by law to make certain *findings* or issue certain *certificates* before they make their *order*. The situation occurs too frequently and is to well known to justify the citation of statutes or authorities.

Referring now to Paragraph 21 of Section 1 of the Act, the carriers on page 37 of their brief quote from former Commissioner Hall of the Interstate Commerce Commission in connection with the Commission's first decision in the *Los Angeles Passenger Terminal Case*. We invite the Court's attention to the following two matters in connection with the quoted language:

1. The language is from a *dissenting* opinion in which only one other commissioner concurred; and

2. Mr. Hall's statement that the complaint of the City of Los Angeles is "ostensibly" a complaint under paragraph 21 was not warranted by anything in the record and was merely his per-

sonal opinion. The City relies much more heavily on other sections of the Act than on said paragraph 21 and in no event exclusively on said paragraph.

We do not agree with the contention of the carriers (Brief of Amici Curiae, pp. 38-39) that under said Paragraph 21 of Section 1 of the Act the Commission's authority is limited to requiring only such extensions of lines as may be incidental and essential to the furnishing of *car service* as defined in the Act, but do not consider it necessary to argue the matter here.

2. Paragraph 3 of Section 3 of the Act.

At pages 39 to 45 of their brief, the carriers refer to paragraph 3 of Section 3 of the Act. We have dealt with this paragraph quite fully in our brief in reply to the brief of the Interstate Commerce Commission, where we believe that the Court will find an answer to every substantial contention contained in the brief of the carriers on this subject. We shall refer here only to a few matters of relatively minor importance.

At page 40 of their brief, the carriers ask why, if we are correct in our reliance on paragraph 3 of Section 3 of the Act, did not the Commission make orders for the construction and operation of union passenger stations prior to the enactment of the Transportation Act, 1920? The answer is simple. Prior to 1920, this paragraph, which was then numbered 2, contained this language:

> "but this shall not be construed as requiring any common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

As it is almost impossible to imagine a union passenger station which does not, at least to some extent, involve the use by one carrier of the tracks or terminal facilities of another carrier, the Commission, as a practical matter, was without authority, prior to 1920, to direct the construction of union passenger depots. However, in 1920, the Transportation Act struck the above quoted words from said paragraph and thus this obstacle was removed.

We note, at page 40 of their brief, the admission by the carriers, that

> "Paragraph 4 (of Section 3) * * * does give the Commission express authority to order one carrier to share its existing terminal facilities with another under defined circumstances."

On page 40 of their brief, the carriers further say:

> "If the Commission has the jurisdiction claimed for it by appellant under paragraph 3 of Section 3, then the specified provisions of paragraph 4 of Section 3 relating expressly to existing terminals are unnecessary and superfluous, for the greater power conferred by paragraph 3 as so construed would include the less power given by paragraph 4."

Here, again, there is a simple answer to the perplexity of the carriers. Paragraph 4 deals with the use by one carrier of the terminal facilities *of another*

carrier and contains the important provision that in such case involving railroad property over which the Commission has jurisdiction the Commission may itself fix the compensation to be paid for the use of the property. But let us assume that land of a *third party* is necessary for the site of the union passenger depot. What then? Paragraph 4 does not apply in that event but paragraph 3 does apply. While it is true that paragraph 3 is in some respects broader than paragraph 4, there was also need for the provisions of paragraph 4 particularly with reference to the fixing of compensation by the Commission for the use by one carrier of the terminal facilities of another carrier.

We note the statement at page 42 of the carrier's brief that

> "This paragraph 3 deals with the interchange of traffic and of passengers between lines of railway."

That is our contention.

At page 45 of their brief, the carriers say that the interchange of passengers at Los Angeles has ceased to be suggested as a possible basis for the Commission's jurisdiction to order a new union station. We believe that this statement, which is absolutely without foundation in fact, was inserted by inadvertence. The City has always relied and now relies strongly on the interchange of passenger traffic in Los Angeles as a basis for the construction and operation of the proposed union passenger station. The Court is re-

spectfully referred to Paragraphs XVI and XVII of the petition for the writ herein (R. 22-4).

3. Paragraph 4 of Section 3 of the Act.

At pages 45 to 51 of their brief, the carriers make what seems to us, in all kindness, to be a very strained and technical argument for the purpose of showing that Congress did not mean what it seems to us it most clearly said when, in adding Paragraph 4 to Section 3 of the Act in 1920, Congress provided that

> "it (Interstate Commerce Commission) shall have power to require the use of any such terminal facilities, including main-line tracks or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, * * *."

At page 50 of their brief, the carriers concede that their contention is contrary to the decision of the Interstate Commerce Commission in *Hastings Commercial Club v. Chicago, M. & St. P. Ry. Co.*, 69 I. C. C. 489.

Their argument is also contrary to the action taken by the Interstate Commerce Commission when it issued its certificates in its second decision in the *Los Angeles Passenger Terminal Case* (142 I. C. C. 489, R. 128, 146-7).

This contention of the carriers is also contrary to the decision of this Court in the *Los Angeles Union Station Case*, 264 U. S. 331, which decision was, in

this respect, carefully followed by the Interstate Commerce Commission in its second decision.

The *facts* bearing on Paragraph 4 of Section 3 of the Act are fully set forth in Paragraph XVIII of the petition for the writ herein (R. 25-26) and are conceded by the Interstate Commerce Commission to be true. These facts have been fully discussed in our brief in reply to the brief of the Commission, on file herein.

Under the circumstances, we do not consider it necessary to give further consideration to the argument of the carriers on this point.

4. The Vacuum.

At pages 51-58 of their brief, the carriers urge that the mere fact that the Transportation Act, 1920, took from the states certain powers with reference to the construction and operation of union passenger stations and appurtenances does not necessarily and automatically delegate these same powers to the Interstate Commerce Commission. The carriers urge that it is at least possible that Congress may have taken such powers away from the states without, at the same time, conferring them upon the Interstate Commerce Commission or any other federal authority, thus leaving no public authority, either state or federal, in a position to regulate the carriers in these respects.

It is, of course, true that such situations at times arise but it is likewise true that the law abhors a

vacuum and that every intendment is against a situation in which all public authority is helpless to regulate common carriers in a matter so important and vital, in the public interest, as the construction and operation of union passenger stations.

What this Court thinks of such a contention appears in its recent decision of January 3, 1928, in *Cleveland, C. C. & St. L. Ry. Co. v. United States,* 275 U. S. 404. In that case, the Big Four first convinced the Supreme Court of Illinois that the jurisdiction with reference to certain railroad trackage was in the Interstate Commerce Commission and then, when the case came before the Interstate Commerce Commission, insisted that the Commission had no jurisdiction because of a certain finding of the State court. The railroad was quite obviously playing both ends against the middle. Referring to this situation, this Court, speaking through Mr. Justice Brandeis, said (p. 412):

> "The Big Four having, thus, convinced the State court that the order of the State Commission was void because the order is one within the jurisdiction of the Federal Commission, insists now that the latter can not act because of the State decision. * * * The declaration of the State court that the track which the Federal authority determines is private, shall be deemed public, can not affect the validity of the order of the Interstate Commerce Commission. *If it could, construction by the railroad of the switch connection with the shipper's track would not be compellable under either State or Federal law.* Compare *United States v. New York C. R. Co.,* 272

U. S. 457, 469, 71 L. ed. 350, 352, 47 Sup. Ct. Rep. 130."

In the present case, this Court apparently is not of the opinion that a vacuum has been here created, as appears from the fact that in the *Los Angeles Union Station Case,* after holding that the State of California is no longer in a position to exercise certain authority in the premises, the Court proceeds to point out just how and to what extent the Interstate Commerce Commission is to act in the matter.

There is no vacuum here. When Congress, in 1920, amended paragraph 3 of Section 3 of the Act and added paragraph 4 of Section 3 and also paragraphs 18 to 21, inclusive, of Section 1, it conferred ample authority upon the Interstate Commerce Commission to do every act prayed for by the City of Los Angeles.

This Court, in our opinion, was clearly of this same opinion when, in concluding its decision in the *Los Angeles Union Station Case,* 264 U. S. 331, 347-8, the Court said:

> "We were advised by statements at the bar after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission, asking for an *order* to provide, maintain, and use a union station; that a hearing followed, and that, pending the decision in this court, the matter is held under consideration.
>
> *"For the reasons given, we think the course taken by the City of Los Angeles was the correct one."*

5. U. S. Supreme Court's Decision in Los Angeles Union Station Case.

At pages 58-63 of their brief, the carriers make what seems to be an effort to construe away the decision of this Court in the *Los Angeles Union Station Case,* 264 U. S. 331.

At page 59, the carriers say:

> "Anything in the opinion about the Interstate Commerce Commission or its powers was said either *arguendo* or as *obiter dictum.*"

We believe that the argument of the carriers under this head has been sufficiently answered by our brief in reply to the brief of the Interstate Commerce Commission. In that brief we analyzed, as carefully as we were able to do so, this Court's decision and pointed out what we understand to be its significance.

We do not believe that any further comment on the argument of the carriers in this respect is necessary.

6. Interstate Commerce Commission's Decision—Majority and Minority Opinions.

At pages 63-66 of their brief, the carriers have made an analysis of the way in which the individual members of the Interstate Commerce Commission voted in connection with the Commission's first and second decisions in the *Los Angeles Passenger Terminal Cases.*

To our mind, the most significant fact in connection with these votes is that three members of the Commission, namely, Commissioners Eastman, Lewis and McManamy, who at the time of the first decision con-

curred in the view that the Interstate Commerce Commission does not have the jurisdiction to make the final *order* prayed for by the City of Los Angeles, had become convinced, by the time the Commission made its second decision, that their first view was in error and hence filed a separate opinion in which they held that the Commission has the authority urged by the City and should have made the final *order* as prayed for.

The Court is respectfully referred to the opinion of these three commissioners, the logic of which seems to us inescapable. The opinion appears in 142 I. C. C. 489, 500 and in the printed record herein at pages 140-145.

These three commissioners joined with all the other commissioners except one on the *merits* and concurred in the issuance of all the *findings* and *certificates* requested by the City and made and issued by the Commission in its second decision.

The question at issue resolves itself into whether, on the one issue of law now before this Court, namely, the Commission's jurisdiction to make the final *order* requested by the City, the *majority* or the *minority* of the Commission are correct.

For the reasons which we have stated, we respectfully submit that the *minority* was correct.

7. Conclusion on Statutory Construction.

We respectfully submit that Congress has delegated to the Interstate Commerce Commission full power

and authority to make the final order prayed for by the City of Los Angeles and that this is exactly what this Court meant when, in the *Los Angeles Union Station Case,* 264 U. S. 331, 347-8, it said that

> "we think the course taken by the City of Los Angeles (in filing with the Interstate Commerce Commission its petition asking for an *order* to provide, maintain and use a union station) was the correct one."

Dated: October 28, 1929.

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Due service and receipt of a copy of the within brief is hereby admitted this.....day of October, 1929.

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Amici Curiae on behalf of Southern Pacific Company, et al.